

REMARKS

Claims 14, 18, and 22 are canceled without prejudice, and therefore claims 8 to 13, 15 to 17, and 19 to 21 are now pending.

It is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

With respect to paragraph two (2) of the Office Action, Applicant believes that there is no objection as the paragraph is written. With the last reply to the Office Action, Applicant submitted copies of all four international references cited on the 01/18/2006 information disclosure statement, and Applicant understands that the Examiner has indicated that these have been considered and made of record. If there is any objection, Applicant respectfully requests that it be expressed explicitly.

With respect to paragraphs five (5) to fourteen (14), claims 8 to 14 were rejected under 35 U.S.C. §103(a) as unpatentable over Salecker et al (GB 2 317 660 A). With respect to paragraph fifteen (15), claims 8 and 9 were rejected under 35 U.S.C. §103(a) as unpatentable over Balz et al (WO 99/50112).

To reject a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

Also, as clearly indicated by the Supreme Court in *KSR*, it is “important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements” in the manner claimed. *See KSR Int'l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007). In this regard, the Supreme Court further noted that “rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.*, at 1396. Second, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must

teach or suggest all of the claim features. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

Still further, to reject a claim as obvious under 35 U.S.C. § 103, the prior art must disclose or suggest each claim feature and it should also provide a motivation or suggestion for combining the features in the manner contemplated by the claim. (See Northern Telecom, Inc. v. Datapoint Corp., 908 F.2d 931, 934 (Fed. Cir. 1990), cert. denied, 111 S. Ct. 296 (1990); In re Bond, 910 F.2d 831, 834 (Fed. Cir. 1990)). Thus, the “problem confronted by the inventor must be considered in determining whether it would have been obvious to combine the references in order to solve the problem”, Diversitech Corp. v. Century Steps, Inc., 850 F.2d 675, 679 (Fed. Cir. 1998).

While the rejections may not be agreed with, to facilitate matters, claim 8 has been rewritten to provide that *if the vehicle is not stationary, authorizing a starting of the engine without a brake intervention and to provide for automatically starting the engine after the starting of the engine is authorized.*

In particular, claim 8, as presented, includes the features of claim 14. It is additionally clarified to the effect that if the check reveals that the vehicle is not stationary in the event of a start command, the start of the engine is authorized, namely without brake intervention. In this context, the clarification “without brake intervention” was inserted, and is disclosed on page 9 of the originally filed application. Furthermore, claim 8 is clarified to the effect that when the start is authorized, an automatic engine start is performed using a starter. This feature is based on page 6 of the originally filed application.

An electric parking-brake system for a motor vehicle having an electric control device for controlling braking equipment and a control element for activating the electric parking-brake system is referred to in WO99/50112 (Abstract). In this context, it is provided according to a third driveaway operating-mode that the electric control device tightens the electric parking-brake system automatically prior to the driveaway and releases it again during the driveaway operation. In this context, the vehicle is prevented from rolling away unintentionally against the driveaway direction, it being possible to ascertain the desired driveaway direction from the gear selection, for example (page 3, third paragraph). A control for starting a motor vehicle having an automatic clutch control is referred to in GB 2317660 A. In the event that it is detected in block 102 that a gear is engaged, the transmission is automatically opened and at least one vehicle brake, such as the parking brake or the service brake, is automatically activated in a block 104. This activation of the brake may be

performed automatically. The operation of the at least one brake is a safety measure to protect the vehicle against unintentionally rolling away, since for a vehicle parked on a slope, an engaged gear and closed transmission form a parking lock, which is released when the transmission is opened, which could lead to the vehicle unintentionally rolling away (page 21, lines 10 through 21).

The Final Office Action could not gather the feature of claim 8, as presented, from both of these references, namely the feature in which in the event of a start command a check is carried out to see whether the vehicle is stationary. The Final Office Action conclusorily asserts that this feature is obvious because such a check is performed by the driver. The check performed according to claim 8, as presented, to see whether the vehicle is stationary is part of the claimed subject matter and therefore does not have to be carried out by the driver. Rather, the claimed method, and the check performed in it to see whether the vehicle is stationary, relieve the driver of performing this task. Apart from this, the method according to the presently claimed subject matter ensures that such a check to see whether the vehicle is stationary is actually performed so that a situation is prevented in which a driver who is distracted from traffic, for example, forgets to check whether the vehicle is stationary, and an accident may result. This being the case, the method according to the present invention as recited in claim 8, as presented, is indeed a safety improvement relative to a human driver as a "checking device," because the checking step in the method according to the presently claimed subject matter is a permanent part of this method.

In contrast, in the case of the human decision-maker, however, it cannot be ensured that such a check is always performed. The merit of the presently claimed subject matter is that it recognizes that a safe start of the engine of the vehicle depends on such a check of whether the vehicle is stationary, and makes this decision a part of the method according to the presently claimed subject matter. In any event, in the start operations referred to in the applied references, in the event of a start command, no check is performed to see whether the vehicle is stationary, so that the driver is not relieved in this regard and the risk of an accident is increased as described above.

Claim 8 also includes the features of claim 14, which has been canceled without prejudice, so that it now provides that in the event that the vehicle is not stationary, the start of the engine is authorized without a brake intervention. An authorization of the start of the engine without a brake intervention in the event that the vehicle is not stationary is not disclosed nor suggested from the applied references. This feature results in the advantage that

it is possible to start a vehicle that is already rolling without first having to bring it to a standstill. In this way, in the event that the vehicle is already rolling anyway, an automatic start operation is not prevented, since in this case it is possible to assume that the driver wants to initiate the automatic start despite the rolling of the vehicle. That is, that the rolling is not undesired, and the driver may estimate and also assumes that this rolling motion does not endanger the driving safety.

With regard to present claim 8 (which reflects the features of canceled claims 14, 18 and 22 which have the same content), the Final Office Action cited the so-called "push-start," according to which the driver personally authorizes the start of the engine in that he activates the ignition switch when a gear is engaged and the vehicle is in motion so that the vehicle may be started without the aid of a starter, for example, in the case of an empty battery. This is achieved in that the driver pushes the vehicle or allows it to roll down a slope. Claim 8 is clarified to the effect that when the start is authorized, an automatic engine start is performed using a starter. This is in direct contrast to the "push-start," in which it is explicit that no starter is used.

Accordingly, claim 8, as presented, is allowable for at least the foregoing reasons, as are its dependent claims 9 to 13, 15 to 17, and 19 to 21.

U.S. Pat. App. Ser. No. 10/565,180  
Attorney Docket No. 10191/4029  
Reply to a Final Office Action of September 3, 2008

**CONCLUSION**

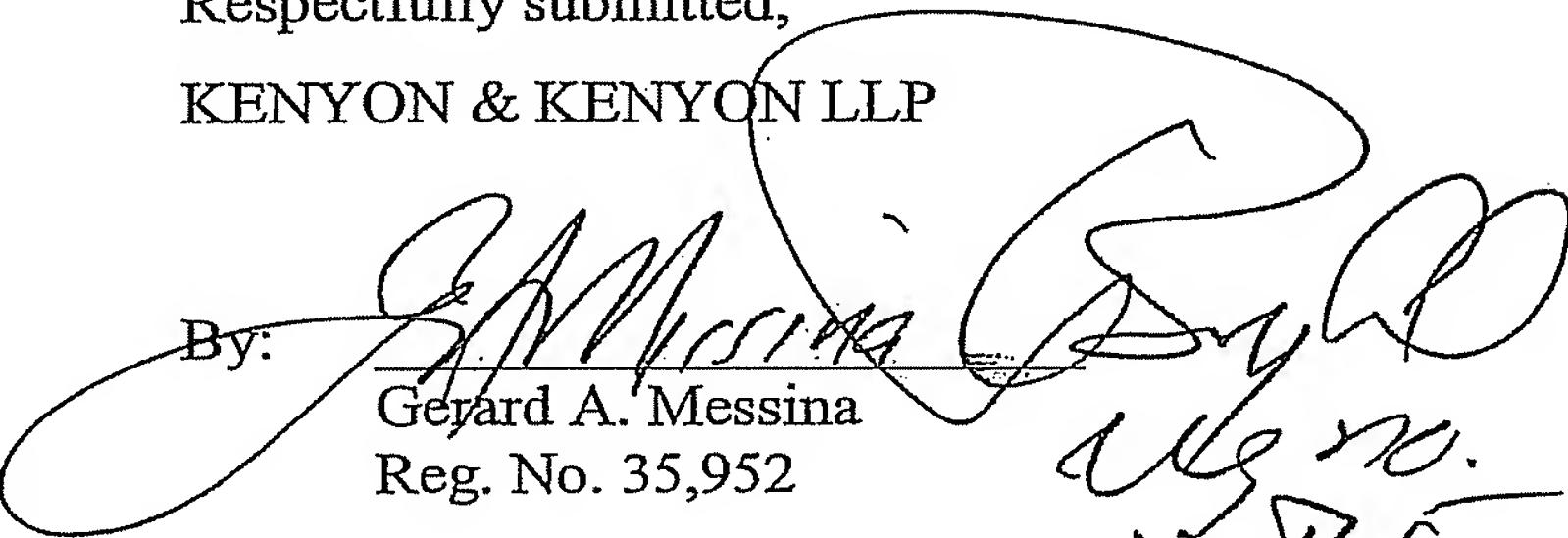
It is therefore respectfully submitted that all of the presently pending claims are allowable and it is respectfully requested that the rejections (and any objections) be withdrawn. Since all issues raised by the Examiner have been addressed, an early and favorable action on the merits is respectfully requested.

Respectfully submitted,

KENYON & KENYON LLP

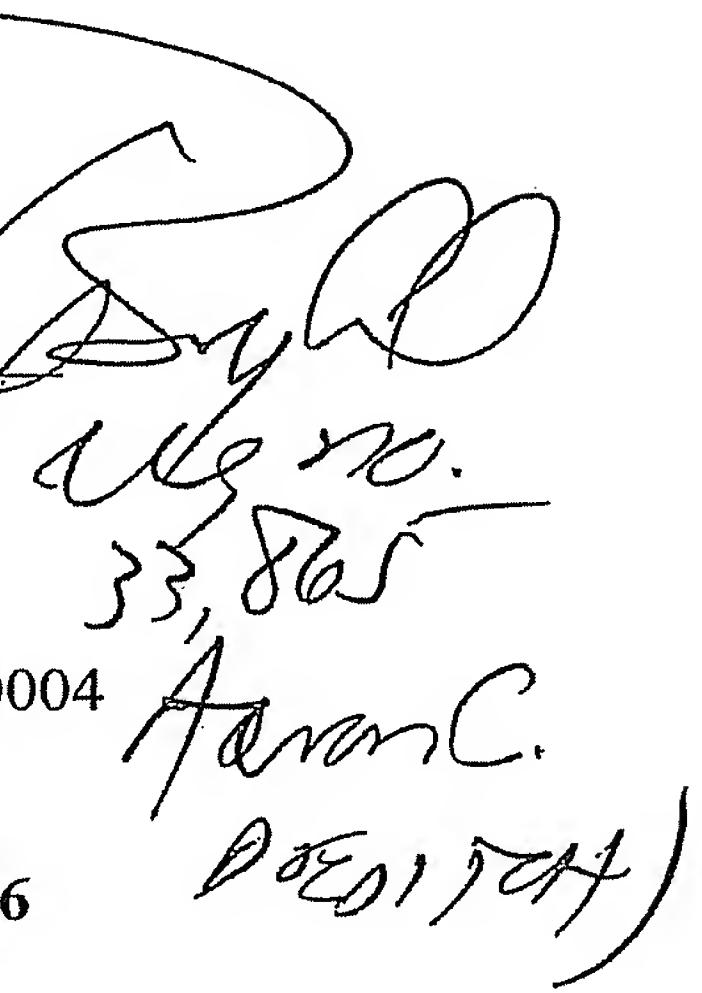
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